

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FRANK GALLEGOS,

Plaintiff,

v.

No. Civ. 14-291 LH/KK

SHELBY TYGART, individually
and COASTAL PROCESSING LLC,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant Coastal Processing LLC's Motion for Limited Appearance to Challenge Jurisdiction and Motion to Dismiss. (ECF No. 9) In addition to filing a response brief (ECF No. 13), Plaintiff has moved to strike Defendant Coastal Processing LLC's motion for failure to comply with D.N.M.LR-Civ. 83.7. (ECF No.12) The Court finds that Plaintiff's motion to strike is well-taken and should be granted. Accordingly, the Court strikes Defendant Coastal Processing LLC's motion.

I. ANALYSIS

On June 10, 2014, Plaintiff amended its complaint to include Defendant Coastal Processing LLC as a party in this lawsuit. (ECF No. 7) On July 11, 2014, Defendant Coastal Processing LLC, through its President and Manager Michael Borgioni, filed the motion now pending before this Court challenging the Court's jurisdiction and seeking dismissal of Plaintiff's complaint. (ECF No. 9) The motion, however, was filed in violation of Local Rule 83.7, which requires corporations, partnerships or business entities appearing before this Court to be represented by an attorney. *See* D.N.M.LR-Civ. 83.7. Mr. Borgioni is not an attorney and to date,

no attorney has entered an appearance on behalf of Defendant Coastal Processing LLC in this matter. Defendant Coastal Processing LLC has, in fact, not taken any action in this case since filing its motion. The Court recently held two telephonic status conferences in this matter, on January 21, 2015 and February 4, 2015, and Defendant Coastal Processing LLC failed to appear telephonically at both status conferences. (*See* Clerk's Minutes, ECF No. 34 and ECF No. 41)

The Tenth Circuit has a longstanding requirement that business entities appearing before district courts in this circuit be represented by attorneys. *See Flora Constr. Co. v. Fireman's Fund Ins. Co.*, 307 F.2d 413, 414 (10th Cir. 1962) ("The rule is well established that a corporation can appear in a court of record only by an attorney at law."); *Harrison v. Wahatoyas, LLC*, 253 F.3d 552, 556 (10th Cir. 2001) ("As a general matter, a corporation or other business entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing pro se."); *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006) ("It has been our long-standing rule that a corporation must be represented by an attorney to appear in federal court."); *Roscoe v. United States*, 134 F. App'x 226, 227 (10th Cir. 2005) (unpublished) (holding that an LLC could not proceed pro se in appeal because "[i]t has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."). Thus, Defendant Coastal Processing LLC's failure to comply with Local Rule 83.7 is grounds for striking its motion.

In addition, Defendant Coastal Processing LLC's failure to respond to Plaintiff's motion to strike constitutes an independent basis for granting the motion to strike. *See* D.N.M.LR-Civ. 7.1(b) (stating that the "failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion"). Due to Defendant Coastal Processing LLC's failure to comply with Local Rule 83.7 and its failure to


respond to Plaintiff's motion to strike, the Court will strike Defendant Coastal Processing LLC's motion.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Strike (ECF No. 12) is granted and Defendant Coastal Processing LLC's Motion for Limited Appearance to Challenge Jurisdiction and Motion to Dismiss (ECF No. 9) is stricken.

IT IS FURTHER ORDERED that the Clerk of the Court is to mail a copy of this memorandum opinion and order to the following addresses for Defendant Coastal Processing LLC:

- (1) 7071 Deer Lodge Circle # 107
Jacksonville, FL 32256
- (2) Michael Borgioni
Coastal Processing LLC
7071 Deer Lodge Circle
Jacksonville, FL 32256

IT IS SO ORDERED.



SENIOR UNITED STATES DISTRICT JUDGE